IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 10968 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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TOPANDAS PARASRAM PARASWANI PRO.OF SHRIRAM TRADERS & 3 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR RAJEEV I CHOPRA for Petitioners.
MR HL JANI, APP for Respondent No.1.
MR MEHUL SHRIVASTAV for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 23/09/2005

ORAL JUDGMENT

1.Rule. Mr. H.L. Jani, learned Assistant Public Prosecutor waives service of rule on behalf of respondent No. 1 – State and Mr. Mehul Shrivastav, learned advocate waives service of rule on behalf of respondent No. 2. At the joint request of the parties and since the matter is settled between the petitioners and the respondent No. 2, the matter is taken up for final hearing.

2.The present petition is filed under Section 482 of the Criminal Procedure Code for quashing and setting aside the complaint bearing I-CR No. 122 of 2005 registered with “C” Division Police Station at Bhavnagar for the offences punishable under Sections 406, 420 and 114 of

Indian Penal Code.

3.This Court has issued notice on 19.09.2005. The respondent No. 2, namely, Shri Vijaybhai Pritamdas Sindhi who was personally present before the Court on 19.09.2005 waived the service of notice.

4.Mr. Rajeev I. Chopra, learned advocate appearing for the petitioners has submitted that the main allegations made in the complaint filed by the respondent No. 2 are that the complainant is the owner of Aarti Trading Company and is engaged in the business of food oil trading and vanaspati ghee in the Bhavnagar city since last many years and the petitioner Nos. 1 & 2 were purchasing the goods on credit from the respondent No. 2 and they were making the payment of goods purchased and there were series of business transactions between them.

It was alleged in the complaint that on 20.05.2005, 9840 Kgs. soyaben oil worth Rs.3,71,480/- was sold to one Shriram Traders, Bhavnagar, whose handling was done by petitioner Nos. 1 & 2 and one Cheque No. 1819080 of Rs.3,71,480/- dated 29.05.2005 of Dena Bank, Khargate Branch, Bhavnagar was given by the petitioner No. 1, proprietor of Shriram Traders, which was deposited and was returned with insufficient balance. The notice was issued to the petitioner Nos. 1 & 2. However, the petitioner Nos. 1 & 2 have left the city and gone somewhere else. Therefore, the notice was sent to the petitioner No. 3, who is brother-in-law of petitioner No. 2.

5.Mr. Chopra has further submitted that the respondent No. 2 had filed complaint against eight accused and out of them, accused Nos. 3 to 6 had preferred an anticipatory bail vide

Cri. Misc. Application No. 819 of 2005 which was granted by the Fast Track Court, Bhavnagar vide order dated 19.07.2005. The accused Nos. 7 & 8 i.e. present petitioner Nos. 3 & 4 have also preferred an anticipatory bail vide Cri. Misc. Application No. 727 of 2005 which was granted by the Fast Track Court, Bhavnagar vide order dated 23.06.2005.

6.Mr. Chopra has further submitted that the accused Nos. 3 to 6 had filed quashing petition being Cri. Misc. Application No. 8925 of 2005 before this Court in which this Court had granted interim relief of stopping the investigation against them vide order dated 16.08.2005. Mr. Chopra has further submitted that the issue involved in the present petition is of a civil nature and there was no criminal offence committed by the petitioners. The petitioner Nos. 1 & 2 had agreed to pay the

outstanding amount to the complainant – respondent No. 2 and Compromise Agreement has also been arrived at between them. A copy of the Compromise Agreement is produced on record. He has, therefore, submitted that nothing remains in the complaint filed by the respondent No. 2 and hence, this Court should exercise its inherent powers under Section 482 of Cr.P.C. and quash and set aside the complaint.

7.Mr. Mehul Shrivastav, learned advocate appearing for the respondent No. 2 – original complainant has submitted that affidavit-in-reply is filed on behalf of respondent No. 2 in which the respondent No. 2 has confirmed that the matter has been compromised between the petitioner Nos. 1 & 2 and respondent No. 2 and the petitioner Nos. 1 & 2 have paid the entire outstanding legal dues i.e. Rs. 3,71,480/- to

the respondent No. 2 which was received by the respondent No. 2 on different dates and receipts have been given by respondent No. 2 to the petitioner Nos. 1 & 2. Copy of these receipts are also produced on record. The respondent No. 2 has also undertaken to return the original cheque which was issued by the petitioner No. 1 in his favour which was subsequently dishonoured and criminal complaint under Section 138 of the Negotiable Instruments Act was filed. So far as the present petition is concerned, it is stated that there now remains no dispute between the petitioners and the respondent No. 2 and the matter has been compromised and no legal outstanding dues are left to be paid by the petitioners. He has, therefore, requested this Court to allow this petition and quash and set aside the complaint.

8.Mr. H.L. Jani, learned Assistant Public

Prosecutor appearing for the respondent No. 1 – State has submitted that since the matter has been settled between the parties, the State will not have any objection if the complaint is quashed by this Court.

9.After having heard learned advocates appearing for the respective parties and after having gone through the present petition, affidavit-in-reply filed by the respondent No. 2 and the documents produced before the Court, the Court is satisfied that the dispute between the parties is amicably settled. Since the dispute was basically of a civil nature and since it is resolved, no useful purpose be served in dragging the parties to face the criminal trial. The position is well settled in this regard. This Court as well as the Hon'ble Supreme Court have also taken the view that in non-compoundable offences also, when there is

no mens rea or malafide intention, the complaints may be quashed by the Court.

10.Considering the facts and circumstances of the present case and having regard to the settled legal position, the Court hereby allows the present petition and the complaint bearing I-CR No. 122 of 2005 registered with “C” Division Police Station at Bhavnagar for the offences punishable under Sections 406, 420 and 114 of Indian Penal Code, qua the present petitioners is hereby quashed and set aside. Rule is made absolute without any order as to costs.

[K.A. PUJ, J.]

Savariya